

Annual Reports 1983

Health Disciplines Board

Denture Therapists Appeal Board



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Health Conseil
Disciplines des disciplines
Board sanitaires

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March 21, 1984

The Honourable Keith C. Norton
Minister of Health

Dear Minister:

I am pleased to submit the Eighth Annual Report of the Health Disciplines Board, for the period ending December 31, 1983. I trust that it meets with your approval.

This Report also includes a statement concerning the Denture Therapists Appeal Board.

Yours very truly,

Hugh K. N. Mackenzie
Chairman

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ANNUAL REPORT - 1983

INTRODUCTION

This is the eighth report of the Health Disciplines Board to the Minister of Health as required by Section 7(1)(b) of The Health Disciplines Act. The report covers the Board's activities in the calendar year 1983.

The Board acknowledges the administrative and professional support provided by the Health Boards Secretariat and legal counsel during the year.

During 1983, Donald McKay, who served as Executive Secretary of the Health Boards Secretariat since 1977 and was associated with the Secretariat since 1973, retired from his position.

The Board wishes to recognize the devoted services of Mr. McKay. His dedication, his attention to detail and his innate sense of humour were qualities which the Board admired and appreciated. Mr. McKay will be missed by the Board. We thank him for his services and wish him well in his retirement.

Health Boards Secretariat

Donald McKay - Executive Secretary (retired, February 1983)

Louise Hastings - Acting Executive Secretary

Sylvia Ramkissoo - Committee Officer

Katie Lyons - Assistant to the Board

Legal Counsel

Russell J. Fraser, Q.C.

Ross B. Freeman

BOARD MEMBERSHIP

The Board was established by The Health Disciplines Act, 1974, proclaimed on July 14, 1975.

No person may be appointed to the Health Disciplines Board who is employed in the public service of the Province, or who is or has been registered in a health profession.

There were no changes in Board membership during 1983.

MEMBERS - 1983

Hugh K. N. Mackenzie, Chairman	Huntsville
Barbara Nichols	Sault Ste. Marie (appointed Vice-Chairman August, 1983)
Ronald Watson	Scarborough (Vice-Chairman until August, 1983)
Solette N. Gelberg	Guelph
Grant Gilstorf	Mount Forest
Stanley V. Green	Chatham
A. J. "Red" Pianosi	Copper Cliff

FUNCTIONS

The Health Disciplines Act maintains self-governing colleges for the five major health disciplines, namely, dentistry, medicine, nursing, optometry and pharmacy. The Board was created to perform two separate and distinct functions under the Act:

1. COMPLAINTS: The Board reviews decisions of the complaints committees of the colleges covered by the Act, when either the complainant or the member complained against is not satisfied with the decision.
2. REGISTRATIONS: The Board, if requested, hears or reviews proposed decisions of the registration committees of the colleges covered by the Act where

the committees propose to refuse to grant registration or to attach terms, conditions or limitations to a registrant.

PROCEDURES

Complaints:

In conducting a review, the Board examines the actions of a complaints committee to determine three things:

- (1) Has the committee conducted a full investigation of the complaint?
- (2) Was the decision reasonable in the light of the investigation?
- (3) Has it protected the public interest?

The complainant and the respondent have the choice of attending the review in person, being represented by an agent, or submitting written representations. It is, of course, desirable that parties to a review attend in person if at all possible. To assist the Board, it is the practice of the colleges to have an officer attend reviews to acquaint the Board with the investigation of the complaint.

A review is held in closed session to protect the privacy

of the individuals concerned, except where both parties specifically request an open meeting or where the Board considers there is a substantial reason for a public review.

Registration:

An applicant, dissatisfied with a proposed decision of a college registration committee, may apply to the Board for a hearing or a review of that decision.

STATISTICS (Tables I - IV)

In 1983, the Board met on 107 days, and issued a total of 172 decisions. In order to reduce its backlog of cases, which stood at 69 on December 31, 1982, the Board met in panels during February and March. The number of cases outstanding at December 31, 1983 was 29.

Table I is an analysis of the origin of the complaint decisions reviewed by the Health Disciplines Board and their disposition.

Table II is an analysis of the origin of the registration decisions reviewed by the Health Disciplines Board and their disposition.

Table III deals with the Ombudsman's Investigations of cases reviewed by the Health Disciplines Board.

Table IV is a summary of Complaint and Registration Cases (Received, Reviewed, Heard).

RELEASE OF DECISIONS

In accordance with its policy of keeping the public informed of its activities, the Board issued six press releases during 1983. The decisions released covered the period from November 1, 1982 to October 31, 1983. To protect the privacy of the parties involved in complaint reviews, the texts of those decisions were released with names of individuals, locations and institutions deleted. Registration hearings are open to the public and the decisions are released in their entirety.

OMBUDSMAN

The policy and practice of the Board has always been one of full co-operation with the staff of the Ombudsman's office in its investigation of cases reviewed or heard by the Board. However, the Board is concerned with the apparent duplication between its role and that of the Ombudsman. The Board believes that it was established to act as a public "watch dog" in relation to the health colleges in

Ontario. It questions the necessity of having a "watch dog" watching a "watch dog". In addition to the duplication of administrative costs to the taxpayer, the Board is concerned that this process prolongs an already lengthy procedure.

The Court of Appeal has held that the Board is an administrative organization. As that language is found in the Ombudsman's Act, the Ombudsman, by judicial interpretation, has jurisdiction to investigate decisions of the Health Disciplines Board. The Board strongly urges that the Ombudsman's Act be amended to exclude the Board from the jurisdiction of the Ombudsman and exempt it from the definition of governmental organization.

Both the Health Disciplines Board and the Ombudsman have made representations to the Health Professions Legislation Review. The Board looks forward to using the forum provided by this review to reach a resolution with the Ombudsman.

CONFIDENTIALITY OF RECORDS

The issue of confidentiality of the medical records has been a major concern to the Board since its inception. The right of members of the public to have access to their medical records is being voiced more frequently. At the

Health Disciplines Board, this issue is magnified by the complaint review process in which the Board endeavours to fairly consider the need of those at the review to make their submissions in an informed manner.

The Board believes that it has a discretion with respect to the release of the record, but at the same time it is restricted by the secrecy provisions of the Health Disciplines Act in relation to the release of confidential information, with certain exceptions. The Board obtained an independent expert legal opinion on this important matter, reviewed its procedure and began exercising its discretion with respect to release of the record or parts thereof.

Computer Records

As computers become increasingly integrated into the record keeping of the Health Care field, a new dimension of confidentiality must be considered. The Board has encountered cases where both the rights of the public and the investigatory powers of a college have been threatened as a result of computer record keeping.

The Board considers the potential impact of this question to be vast. "Neither the patients nor the agencies collecting and keeping data know which way to turn and what

their privileges and responsibilities are" (Report of the Commission of Inquiry into the Confidentiality of Health Information, V.II p. 178, 1980). To this statement by the Krever Commission, the Board might add that, in its experience, the investigatory powers of the colleges may also be affected. Whether or not, for example, data in a computer's memory bank constitutes a statutory record is unclear. Computer operators', technicians' and administrators' understanding and commitment to confidentiality is also unclear. There are many questions concerning confidentiality of computer records and the Board has begun to encounter some of these questions in the course of exercising its duties.

RESERVED DECISIONS

It has been the practice of the Board to reserve the vast majority of decisions in Complaint Reviews. The Board is concerned that this process adds at least several weeks to the complaint process, which is already a lengthy one, and is therefore an added frustration for both the complainant and the respondent.

The Board therefore, has decided to make reserved decisions the exception, rather than the rule. Except for reasons of complexity, compassion or security, the Board will render its decision at the conclusion of a Review. The decision

and reasons will, of course, subsequently be put in writing and forwarded to the parties in the usual manner.

CONSENT

In previous Annual Reports, the Board has expressed its concern regarding the need, on the part of both the practitioner and the patient, for a full appreciation of consent.

"The Health Disciplines Board believes it is the responsibility of the attending physician to ensure that the patient fully understands what he or she is being asked to sign, what it means, what material risks are involved in surgery, therapy or treatment and what the outcome of the procedure may, or may not be." (HDB Annual Report, 1981)

The Board continues to believe that the Ontario Hospital Association should investigate the advisability and practicality of having standard consent forms for all hospitals in Ontario.

In 1983, the Board has seen little evidence that substantive changes have been effected to improve the quality of the consent being obtained. This continues to be of concern to the Board.

STATUTE OF LIMITATIONS

The Board is compelled under s.8(2) of the Health Disciplines Act to conduct a review of any decision of a complaints committee disposing of a complaint if such a review is requested, by the complainant or the respondent, within 20 days of receipt of the decision.

Statistics compiled between the years 1976 and 1981 indicate the Board has had to deal with a number of cases each year concerning complaints about treatment received several years prior to the date a formal complaint was lodged with the college. In fact, almost 7% of the cases dealt with during that period were over six years old. The Board's cases in 1983 substantiate this pattern.

A lengthy delay in lodging formal complaints has imposed constraints on the investigation process. Records have been destroyed. Respondents and others to be interviewed or contacted have been unavailable and, both the complainant's and the respondent's recall of the event is often limited. The Board is of the opinion that undue delays interfere with not only a fair investigation process, but with the fairness of the review itself. In common law there is a limitation period beyond which a matter may not be pursued. The Board is of the opinion that such a provision ought to apply to complaints lodged with colleges.

It is the understanding of the Board that an amendment has been proposed which would give the colleges the discretion not to investigate complaints concerning incidents occurring more than six years prior to the date the complaint was formally lodged. The Board can see merit in such an amendment.

AGE OF PRACTITIONERS

The Board conducted a complaint review in 1983 which dealt with a practitioner who was over 80 years of age. While the practitioner in this incident could not be faulted in his care of the patient, the review raised the question of continuing competence in aging practitioners. The Board has dealt in previous years with other cases in which the age of the practitioner and safety to practise have been in question.

The Board is of the opinion that a system of periodic "monitoring" would help to ensure the continuing competence of medical professionals working in a rapidly changing field. While some individuals may feel that this type of monitoring is a form of discrimination, the Board points out that it is a practice followed by many regulatory bodies, including the Ministry of Transportation and Communication which requires people over the age of eighty to take annual driving tests. The Board believes

that scrutiny in the Health Care field is no less important.

OHIP AVERAGING

Although the Board has no jurisdiction over monetary settlements, the question of fees has arisen on occasion as the regulations governing some colleges do include, in their definition of professional misconduct, unfair billing procedures, unreasonable fee schedules, etc. (Regulations 447, 448, 450, 451.) OHIP averaging or charging in excess of the OHIP fee schedule for some services and charging below the OHIP fee schedule for other services so that the total fee is within the OHIP schedule, is a practice which the Board feels should be taken under consideration by the Colleges. The Board encountered a case in 1983 in which this practice was used and was informed that it was not an uncommon practice. The Board agreed with the College that there were no grounds for professional misconduct; however, the Board recommended that the Complaints Committee refer the matter of OHIP averaging to the College's Executive Committee.

Table I

HEALTH DISCIPLINES BOARDComplaint Review Decisions Issued by College

	<u>1983</u>	<u>1975-82</u>
Total	(128) %	(608) %
<u>COLLEGE</u>		
Dentistry	34	25
Medicine	61	69
Nursing	3	3
Optometry	1	1
Pharmacy	1	2
	<u>100%</u>	<u>100%</u>

DISPOSITION OF COMPLAINTS

Confirmed Decisions	80	83
Referred back to Colleges	20 —	17 —
Admonishment	7	5
Further Investigation	4	7
Discipline Hearing	5	4
With Comments	4	1
	<u>20%</u>	<u>17%</u>
	<u>100%</u>	<u>100%</u>

Table IIHEALTH DISCIPLINES BOARDRegistration Decisions Issued by College

	<u>1983</u>	<u>1975-82</u>
Total	(45) %	(276) %
<u>COLLEGE</u>		
Dentistry	7	1
Medicine	18	25
Nursing	64	71
Optometry	-	*
Pharmacy	11	3
	<u>100%</u>	<u>100%</u>

DISPOSITION OF REGISTRATIONS

Confirmed Decisions	84	80
Referred back to Colleges	16**	20
	<u>100%</u>	<u>100%</u>

* Less than 1/2 of 1%

** Includes 1 accreditation hearing

Table III

HEALTH DISCIPLINES BOARD

OMBUDSMAN INVESTIGATIONS

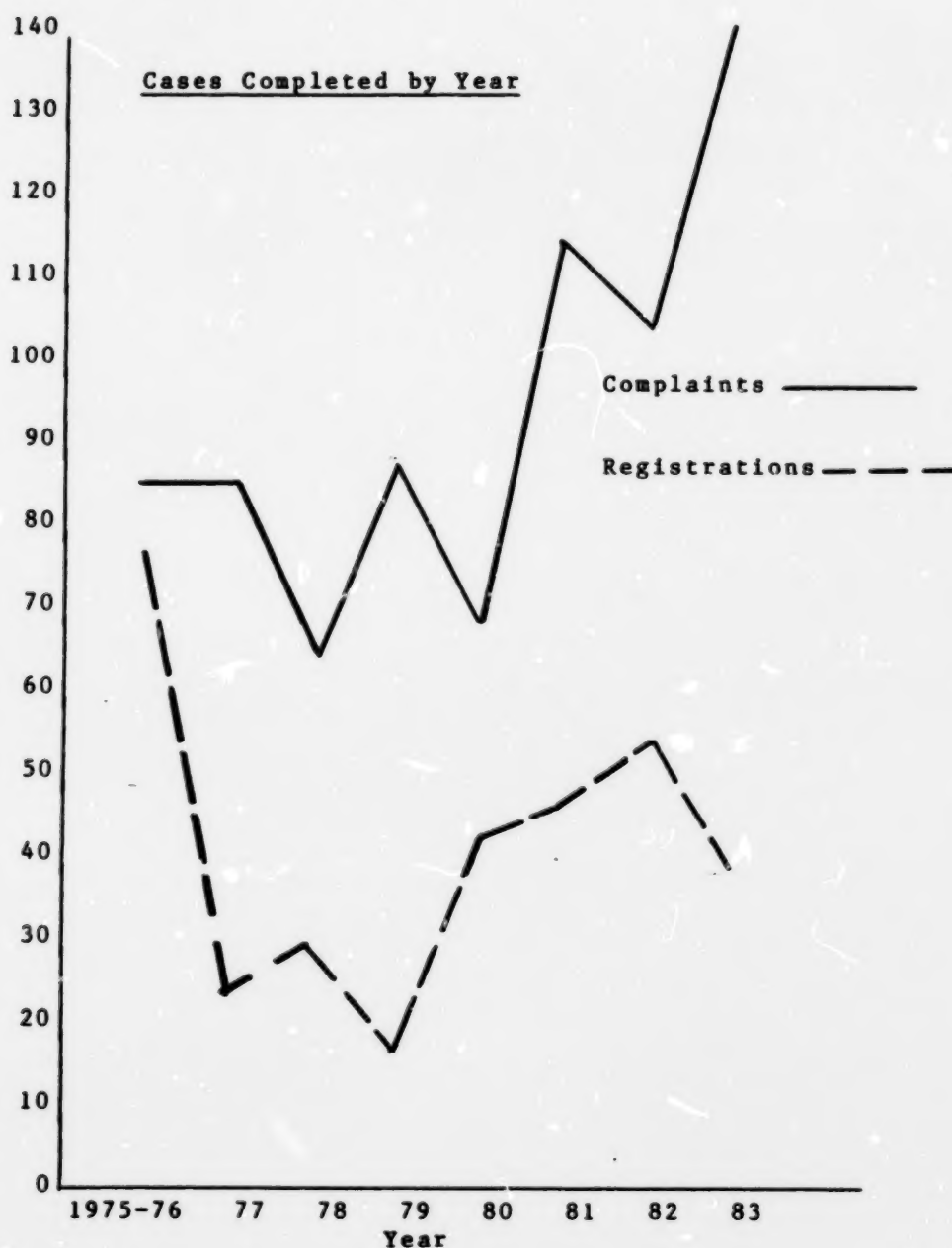
The Health Disciplines Board began issuing decisions in 1975. The Ombudsman first investigated a decision of the Board in 1976.

Total Health Discipline Board Decisions 1975-1983	(1057)	
	<u>X</u>	
Total Cases referred to the Ombudsman 1975-1983	(58)	5
	<u>X</u>	
Cases outstanding with the Ombudsman		16
Cases completed by the Ombudsman	(49)	94
	<u>X</u>	<u> </u>
Ombudsman's decision which did not support the Health Disciplines Board		2
Ombudsman's decisions which supported the Health Disciplines Board		98*
		<u>100X</u>
Total Health Disciplines Board Decisions 1975-1983 which were not referred to the Ombudsman		95
		<u>100X</u>

* Three of these decisions supported the Board but included some comments from the Ombudsman.

HEALTH DISCIPLINES BOARDTable IVSummary of Complaint and Registration
Cases Received, Reviewed/Heard

	<u>1983</u>	<u>1982</u>	<u>% change</u>
Received	132	200	-34
Reviewed/Heard	179	156	+15
Decisions Issued	172	156	+11



DENTURE THERAPISTS APPEAL BOARD

The Denture Therapists Appeal Board was established by the Denture Therapists Act, 1974, which was proclaimed on July 14, 1975.

The membership of the Denture Therapists Appeal Board is identical to that of the Health Disciplines Board.

The Board conducted one complaint review during 1983; it upheld the decision of the Complaints Committee.

No complaints were outstanding at December 31, 1983.

No requests for registration reviews or hearings were received during 1983.